

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**RYAN DUBOISE, et al.,**

**Plaintiffs,**

**v.**

**OFFICER WOODS, et al.,**

**Defendants.**

**Case No. 1:19-cv-7-SPB-RAL**

**MEMORANDUM ORDER**

The instant prisoner civil rights action was removed from the Forest County Court of Common Pleas to this Court on January 8, 2019 and was referred to United States Magistrate Judge Richard A. Lanzillo for report and recommendation (“R&R”), in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and the Local Civil Rules of this Court. The Plaintiffs’ complaint sets forth claims under 42 U.S.C. §1983 against Corrections Officers Woods, Thornton, Rose and Barger based on the Defendants’ alleged violations of Plaintiffs’ rights under the First and Fourteenth Amendments to the U.S. Constitution. Factually, Plaintiffs contend that the Defendants destroyed their personal property without due process and retaliated against them for filing lawsuits against the Defendants and other corrections officers.

On August 6, 2019, Defendants filed a motion for summary judgment and supporting papers. ECF Nos. 18, 19, 20, 21. In their motion, Defendants challenged Plaintiffs’ claims on both failure-to-exhaust and substantive grounds. Plaintiffs submitted their opposing brief and related filings on August 22 and 23, 2019. ECF Nos. 23, 24, 25.

On January 9, 2020, Judge Lanzillo issued an R&R recommending that the Defendants’ motion for summary judgment be denied. ECF No. 26. With respect to Defendants’ failure-to-exhaust argument, Judge Lanzillo agreed that the state-wide lockdown that was in effect from

August 29, 2018 to September 10, 2018 did not render administrative remedies “unavailable” to Plaintiffs, because they still had a period of eight days after termination of the lockdown within which to file an administrative grievance against the Defendants. Alternatively, the Magistrate Judge found, Plaintiffs could have requested an extension of time relative to their grievance deadline, as contemplated by the DOC’s internal grievance procedures. On the other hand, Judge Lanzillo opined that the record presents an issue of fact about whether prison personnel rendered administrative remedies unavailable through alleged acts of intimidation. The Magistrate Judge recommended that the Court hold an evidentiary hearing to resolve this disputed issue. With regard to the substance of Plaintiffs’ claims, Judge Lanzillo opined that genuinely disputed factual issues precluded entry of summary judgment in the Defendants’ favor.

Objections to the R&R were due no later than January 27, 2020. Although Defendants did not file objections, Plaintiffs did. *See* ECF No. 27. In their objections, Plaintiffs challenge the Magistrate Judge’s determination that they still had time, even after the lockdown ended, to pursue administrative remedies within the prison system. Plaintiffs further object to the recommendation that the Court hold an evidentiary hearing on the exhaustion issue concerning Defendants’ alleged acts of intimidation.

After *de novo* review of the complaint and documents in the case, together with the report and recommendation and Plaintiffs’ objections thereto, the following order is entered:

AND NOW, this 28<sup>th</sup> day of January, 2020;

IT IS HEREBY ORDERED that the motion for summary judgment filed by Defendants, ECF No. [18], shall be, and hereby is, DENIED.

IT IS FURTHER ORDERED that the report and recommendation of Magistrate Judge Lanzillo, issued on January 9, 2020, ECF No. [26], is adopted as the opinion of the Court, and Plaintiffs' objections to the R&R are hereby OVERRULED.

A handwritten signature in cursive script, reading "Susan Paradise Baxter".

SUSAN PARADISE BAXTER  
United States District Judge

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